

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JANE DOE, as Guardian of J. DOE, a minor, and in her individual capacity

Case No. 3:23-cv-111-ART-CLB

## Order

V.

WASHOE COUNT SCHOOL DISTRICT,  
a political subdivision of the State of  
Nevada, its BOARD of TRUSTEES, and  
its SUPERINTENDENT, DR. SUSAN  
ENFIELD, DOES I-XX, and ROE  
entities I-XX.

## Defendants.

Plaintiffs Jane Doe and J. Doe (Minor Plaintiff) bring the current action against Washoe County School District (WCSD) for its alleged failure to protect Minor Plaintiff from race and disability discrimination, including a teacher harassing Minor Plaintiff and slamming him to the ground. Plaintiffs further allege that WCSD allowed an offensive and hostile school environment to form and failed to provide Minor Plaintiff with a free appropriate public education (FAPE) as required by the Individuals with Disabilities Education Act (IDEA). Plaintiffs allege ten causes of action: 1) declaratory relief; 2) violation of the Fourteenth Amendment Equal Protection Clause; 3) violation of Title VI of the Civil Rights Act of 1964; 4) violation of the IDEA; 5) assault; 6) battery; 7) intentional infliction of emotional distress (IIED); 8) negligent hiring, retention, and supervision; 9) negligence; and 10) punitive damages. Before the Court is Defendant's Motion to Dismiss (ECF No. 15).

The Court assumes the parties are aware of the facts of the case, so it will therefore not repeat them here.

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1           **I.     LEGAL STANDARD**

2           A court must dismiss a complaint if it fails to state a claim upon which relief  
 3 can be granted. FED. R. CIV. P. 12(b)(6). “To survive a motion to dismiss, a  
 4 complaint must contain sufficient factual material, accepted as true, to ‘state a  
 5 claim to relief on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (quoting *Bell*  
 6 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial  
 7 plausibility when the plaintiff pleads factual content that allows the court to draw  
 8 the reasonable inference that the defendant is liable for the misconduct alleged.”  
 9 *Id.* at 663 (citing *Twombly*, 550 U.S. at 556).

10          At the pleading stage, *Twombly* and *Iqbal* “calls for enough fact[s] to raise a  
 11 reasonable expectation that discovery will reveal evidence of [the claim].”  
 12 *Twombly*. 550 U.S. at 556. Under *Twombly* and *Iqbal*, “[a] court considering a  
 13 motion to dismiss can choose to begin by identifying pleadings that, because they  
 14 are no more than conclusions, are not entitled to the assumption of truth.” *Iqbal*,  
 15 556 U.S. at 664. Then, the court should assume the veracity of well-pleaded  
 16 factual allegations “and then determine whether they plausibly give rise to an  
 17 entitlement to relief.” *Id.*

18           **II.    DISCUSSION**

19           a. Claims against Dr. Enfield and the Washoe County School District’s  
 20               Board of Trustees

21          As an initial matter, since the filing of the Motion to Dismiss, the Court has  
 22 granted the parties’ stipulation to dismiss without prejudice Defendants Dr.  
 23 Enfield and WCSD’s Board of Trustees. (ECF No. 19.) Thus, the only remaining  
 24 Defendant is WCSD.

25           b. Declaratory Relief Claim

26          The Court will dismiss Plaintiffs’ claim for declaratory relief because it serves  
 27 no unique purpose in the lawsuit. “Declaratory relief should be denied where it  
 28 is redundant or where it will serve no purpose in clarifying the dispute between

1 parties.” *Clifford v. Geico Cas. Co.*, 428 F.Supp.3d 317, 326 (D. Nev. 2019) (citing  
 2 *United States v. State of Wash.*, 759 F.2d 1353, 1357 (9th Cir. 1985)). Here,  
 3 Plaintiffs seek a declaration from the Court that WCSD violated Minor Plaintiff’s  
 4 constitutional right to equal protection, negligently failed to protect Minor Plaintiff  
 5 and prohibit discriminatory conduct, denied Minor Plaintiff their rights under the  
 6 IDEA, failed to provide a safe and respectful learning environment free from  
 7 bullying, harassment, and discrimination, failed to supervise and discipline its  
 8 teachers, and was deliberately indifferent to the plight of Minor Plaintiff through  
 9 its customs, policies, and practices. (ECF No. 1 at ¶¶ 106, 109, 111-113.) Because  
 10 these issues overlap with Plaintiffs’ other causes of action, the Court will dismiss  
 11 the Declaratory Relief claim.

12                   c. Fourteenth Amendment Equal Protection Claim

13                  Defendant raises two arguments to justify dismissal of Plaintiffs’  
 14 Fourteenth Amendment Equal Protection claim. First, Defendant argues that  
 15 Plaintiffs failed to exhaust administrative remedies. Defendant additionally  
 16 claims that Plaintiffs have not properly plead *Monell* liability. Because the Court  
 17 finds both arguments unpersuasive, the Court will allow the claim to proceed.

18                   i. Exhaustion of Administrative Remedies

19                  The IDEA often requires exhaustion of administrative remedies, even if the  
 20 plaintiff brings a claim under a different statute. Plaintiffs are required to exhaust  
 21 under three circumstances: 1) when they seek an IDEA remedy or its functional  
 22 equivalent; 2) when they seek “prospective injunctive relief to alter an IEP or the  
 23 education placement of a disabled student”; and 3) when they seek “to enforce  
 24 rights that arise as a result of a free appropriate public education, whether plead  
 25 as an IDEA claim or any other claim that relies on the denial of a FAPE to provide  
 26 the basis for the cause of action.” *Payne v. Peninsula School Dist.*, 653 F.3d 863,  
 27 875 (9th Cir. 2011) (en banc), cert. denied, 132 S. Ct. 1540 (2012) (overruled in  
 28 part on other grounds). “[P]laintiffs cannot avoid exhaustion through artful

1 pleading. If the measure of a plaintiff's damages is the cost of counseling,  
 2 tutoring, or private schooling-relief available under the IDEA-then the IDEA  
 3 requires exhaustion." *Id.* at 877. "[Ex]haustion is not necessary when the  
 4 gravamen of the plaintiff's suit is something other than the denial of the IDEA's  
 5 core guarantee-what the Act calls a 'free appropriate public education.'" *Fry v.*  
 6 *Napoleon Cnty. Schools*, 580 U.S. 154, 158 (2017).

7 The Court finds that Plaintiffs were not required to exhaust administrative  
 8 remedies pursuant to the IDEA to bring their Fourteenth Amendment Equal  
 9 Protection claim. Plaintiffs allege that Defendant violated the Fourteenth  
 10 Amendment by carrying out customs and policies that tolerated discriminatory  
 11 acts on the basis of race and disability and failed to develop, implement, and  
 12 maintain an adequate IEP for Minor Plaintiff. (ECF No. 1 at ¶¶ 106, 109, 111-  
 13 113.) While plaintiffs normally need to exhaust claims related to FAPE, Plaintiffs  
 14 did not need to exhaust this claim because "the gravamen of the...suit is  
 15 something other than the denial of...FAPE." *Fry*, 580 U.S. at 158. First, the  
 16 Fourteenth Amendment claim concerns discrimination on the basis of both  
 17 disability and race, so the claim goes beyond IDEA concerns. Furthermore,  
 18 Plaintiffs are not bringing their Fourteenth Amendment claim to secure remedies  
 19 provided by the IDEA; they are using the denial of FAPE, in addition to other  
 20 allegations, as proof of disability discrimination. Thus, Plaintiffs were not  
 21 required to exhaust the IDEA's administrative remedies for this claim.

## 22           ii. *Monell* Liability

23 Defendant further claims that Plaintiffs failed to properly plead *Monell* liability.  
 24 "A government entity may not be held liable under 42 U.S.C. § 1983 unless a  
 25 policy, practice, or custom of the entity can be shown to be a moving force behind  
 26 a violation of constitutional rights." *Dougherty v. City of Covina*, 654 F.3d 892,  
 27 900 (9th Cir. 2011) (citing *Monell v. Dep't of Soc. Servs. of the City of New York*,  
 28 436 U.S. 658, 694 (1978)). To establish *Monell* liability, a plaintiff must prove (1)

1 that [the plaintiff] possessed a constitutional right of which he was deprived; (2)  
 2 that the municipality had a policy; (3) that this policy amounts to deliberate  
 3 indifference to the plaintiff's constitutional right; and, (4) that the policy is the  
 4 moving force behind the constitutional violation." *Id.* (quoting *Plumeau v. Sch.*  
 5 *Dist. No. 40 Cnty. Of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997)).

6 Plaintiffs meet the requirements for *Monell* liability. Plaintiffs allege that  
 7 Defendant allegedly had a pattern of tolerating racial and disability  
 8 discrimination in its schools. (ECF No. 1 at ¶ 106.) This toleration allegedly rose  
 9 to the level of deliberate indifference because the school district continued to  
 10 employ a teacher, Ismari, who is accused of repeated acts of racial and disability  
 11 discrimination, even though he maintained this behavior after being investigated  
 12 multiple times and being forced to attend a training. (*Id.* at ¶¶ 59, 61.) Plaintiffs  
 13 assert that this discriminatory behavior violated the rights of Minor Plaintiff and  
 14 similarly situated students of color and students with disabilities. For instance,  
 15 Plaintiffs claim that, because of disability discrimination, the school district  
 16 "failed to develop, implement, and maintain an adequate IEP" for Minor Plaintiff.  
 17 (*Id.*) In addition, Plaintiffs allege that Ismari targeted students of color and would  
 18 purposely antagonize those with disabilities. (*Id.* at ¶ 50.) He allegedly called  
 19 Minor Plaintiff the n word and referred to another group of students as "the chain  
 20 gang." (*Id.* at ¶¶ 46, 51.) Furthermore, Minor Plaintiff was allegedly disciplined  
 21 more frequently and severely on account of his race. (*Id.* at ¶ 69.) Because  
 22 Plaintiffs provided enough facts for *Monell* liability, the Court will allow the claim  
 23 to proceed.

24                   d. Title VI of the Civil Rights Act

25 Defendant seeks dismissal of Plaintiffs' Title VI cause of action for failure to  
 26 properly plead *Monell* liability. "A government entity may not be held liable under  
 27 42 U.S.C. § 1983 unless a policy, practice, or custom of the entity can be shown  
 28 to be a moving force behind a violation of constitutional rights." *Dougherty v. City*

1       of *Covina*, 654 F.3d 892, 900 (9th Cir. 2011) (citing *Monell v. Dep’t of Soc. Servs.*  
 2       *of the City of New York*, 436 U.S. 658, 694 (1978)). To establish *Monell* liability, a  
 3       plaintiff must prove (1) that [the plaintiff] possessed a constitutional right of  
 4       which he was deprived; (2) that the municipality had a policy; (3) that this policy  
 5       amounts to deliberate indifference to the plaintiff’s constitutional right; and, (4)  
 6       that the policy is the moving force behind the constitutional violation.” *Id.*  
 7       (quoting *Plumeau v. Sch. Dist. No. 40 Cnty. Of Yamhill*, 130 F.3d 432, 438 (9th  
 8       Cir. 1997)).

9       Plaintiffs plead sufficient facts to establish *Monell* liability for their Title VI  
 10      claim. Plaintiffs have claimed that Ismari, violated Minor Plaintiff’s rights by  
 11      allegedly harassing and provoking Minor Plaintiff on account of his race and  
 12      disability, including calling him the n word, resulting in the teacher body-  
 13      slamming and choking Minor Plaintiff. (ECF No. 1 at ¶¶ 45-50,122-123). In the  
 14      Complaint, Plaintiffs also asserts that “Minor Plaintiff was disciplined more  
 15      frequently or more severely because of his race, color, or national origin[.]” (*Id.* at  
 16      ¶ 69.) Plaintiffs further alleges that WCSD acted with deliberate indifference to  
 17      Minor Plaintiff’s rights by having a policy of tolerating and condoning racially  
 18      discriminatory conduct, which created a dangerous and discriminatory school  
 19      environment. (*Id.* at ¶¶ 122-126.) To support their claim that WCSD had a policy  
 20      of tolerating racial discrimination in its schools, Plaintiffs state that Ismari  
 21      allegedly has a history of discriminating against students of color since March  
 22      2011. (*Id.* at ¶ 66.) For example, Ismari was accused of referring to a group of  
 23      students as “the chain gang.” (*Id.* at ¶¶ 51.) He also was allegedly known to target  
 24      in particular male students of color and follow and antagonize them. (*Id.* at ¶ 50.)  
 25      While Ismari was investigated multiple times and directed to attend training on  
 26      how to deal with difficult student behavior and not verbally harm students in  
 27      August 2014 (*Id.* at ¶¶ 59, 61), Plaintiffs state a viable claim for violation of Title  
 28      VI since it is plausible that the School District’s response was inadequate in light

1 of Ismari allegedly committing further acts of racial discrimination since 2014.  
2 As a result, the Court will deny Defendant's Motion to Dismiss the Title VI claim.

3       e. Violation of the IDEA

4       Defendant also asks this Court to dismiss Plaintiffs' claim for damages for  
5 violation of the IDEA. The IDEA generally requires exhaustion of administrative  
6 remedies, but courts have provided exceptions where exhaustion would be futile  
7 or inadequate. *Honig v. Doe*, 484 U.S. 305, 326-327 (1988) (internal citations  
8 omitted).

9       Plaintiffs were required to exhaust the IDEA claim prior to bringing this suit.  
10 Plaintiffs have failed to show how exhaustion would be inadequate or futile for  
11 them. In their opposition to Defendant's Motion to Dismiss, Plaintiffs misconstrue  
12 *Luna Perez v. Sturgis Public Schools*, 598 U.S. 142 (2023). "The question [the  
13 Supreme Court faced] in this case concern[ed] the extent to which children with  
14 disabilities must exhaust these administrative procedures under IDEA before  
15 seeking relief under other federal antidiscrimination statutes, such as the  
16 Americans with Disabilities Act of 1990 (ADA)." *Luna Perez*, 598 U.S. at 144.  
17 Thus, that case is distinguishable from the present action because Plaintiffs  
18 alleged a violation under the IDEA, not a cause of action based on a different  
19 antidiscrimination statute. Plaintiffs brought an IDEA claim of action alleging  
20 denial of FAPE. (ECF No. 1 at ¶¶ 131-145.) Plaintiffs may have also discussed  
21 alleged disability discrimination, but that does not change the nature of an IDEA  
22 claim. As a result, the Court will dismiss the IDEA cause of action for failure to  
23 exhaust.

24       f. Assault, Battery, and IIED Claims

25       The Court will allow Plaintiffs' assault, battery, and IIED claims to proceed.  
26 Defendant argues that Plaintiffs cannot bring these claims because Defendant  
27 cannot be held liable for intentional torts. (ECF No. 15 at 19.) However,  
28 government entities can be held liable for their employees' intentional torts. For

example, a court held a school district liable when a teacher sexually abused a female student because the student was on the premises to receive the defendant's services. *Doe A. v. Green*, 298 F.Supp.2d 1025, 1042 (D. Nev. 2004). It did not matter that the teacher "was obviously not hired to molest, abuse, or threaten minors" because the wrongful act was committed within the course of his employment and was reasonably foreseeable. *Id.* Similarly, Ismari was not hired to discriminate against students of color or students with disabilities, but he still did so while performing his work, so the school district can be held liable for his alleged battery, assault, and IIED against Minor Plaintiff.

The Court further notes that Nevada law clearly allows government entities to be held liable for their employees' intentional torts. NRS 41.745 states that employers are "not liable for harm or injury caused by the intentional conduct of an employee" if the conduct was the employee's independent venture, not committed in the course of the employee's tasks, and not reasonably foreseeable based on the nature and scope of his or her employment. NRS. 41.745. This statute necessarily implies that employers can be held liable for their employees' intentional conduct when it was not independent, was done in the course of their tasks, and was reasonably foreseeable. The statute applies to both public and private employers, *see ASAP Storage, Inc. v. City of Sparks*, 173 P.3d 734, 745 n.57 (Nev. 2007), so WCSD can be held liable for its employees' intentional torts. Thus, the Court will allow the claim to proceed.

g. Negligent Hiring, Retention, and Supervision Claim

Plaintiffs improperly pled their negligent hiring, retention, and supervision claim. The Court notes that negligent hiring is a separate tort from negligent supervision, training, and retention. *See Sanchez v. Albertson's LLC*, 2:19-cv-02017-JAD-DJA, 2022 WL 2982926, at \*2 ("Nevada courts recognize two separate torts—one for negligent hiring and another for negligent training, supervision, and retention—but not one that merges them together."); *see also Vaughan v.*

1       *Harrah's Las Vegas, Inc.*, 239 P.3d 863 (Nev. 2008) (separately analyzing a  
2 negligent-hiring claim and a claim for negligent training, supervision, and  
3 retention). The Court will grant Plaintiff leave to amend this claim to separately  
4 plead each cause of action.

5                  h. Negligence Claim

6       Plaintiffs bring a separate claim for negligence, but the Court is unclear how  
7 this cause of action is distinct from negligent hiring and negligent training,  
8 supervision, and retention. The Court will allow Plaintiffs to amend this cause of  
9 action to provide clarity.

10                 i. Punitive Damages

11       The Court will dismiss Plaintiffs' punitive damages claim because it is not an  
12 independent cause of action. *See Garcia v. Nevada Prop., 1, LLC*, 2:14-cv-1707-  
13 JCM-GWF, 2015 WL 67019, at \*4 (D. Nev. Jan. 6, 2015) ("Punitive damages...are  
14 not a legitimate basis for an independent cause of action. Punitive damages are  
15 one remedy that the court may impose upon a finding of liability.").

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1           **III. CONCLUSION**

2           It is therefore ordered that Defendant's Motion to Dismiss (ECF No. 15) is  
3 granted in part and denied in part. The Court will dismiss Plaintiffs' claims for  
4 declaratory relief, violation of the IDEA, and punitive damages. The Court will  
5 allow Plaintiffs' claims for violation of the Fourteenth Amendment's Equal  
6 Protection Clause, violation of Title VI of the Civil Rights Act of 1964, assault,  
7 battery, and IIED to proceed. The Court grants leave to amend for Plaintiffs'  
8 negligent hiring, retention, and supervision claim and its negligence claim.

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DATED THIS 29<sup>th</sup> day of March 2024.

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ANNE R. TRAUM  
UNITED STATES DISTRICT JUDGE

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